

**** E-filed October 28, 2009 ****

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
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 Plaintiff,)
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 v.)
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 ROBERTO MIER GODINEZ,)
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 Defendant.)
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No. CR 09-00553 JW

~~[Proposed]~~ **ORDER TO PRODUCE
 NARCOTICS FOR REWEIGHING BY
 DEFENSE EXPERT**

IT IS HEREBY ORDERED that, in accordance with Rule 16(a)(1)(E) of the Federal Rules of Criminal Procedure, the Federal Bureau of Investigation ("FBI") shall permit Alan Wu, Ph.D, DEA License No. PC0177990, Lab Director of the San Francisco General Hospital, located at 1001 Potrero Avenue, San Francisco, CA 94110, telephone (415) 206-3540, to reweigh and determine the identity of FBI Drug Exhibit 1B1 from FBI Case File Number 281C-SF-144155-D2 (DEA Laboratory Number 7152009).

IT IS FURTHER ORDERED that a FBI Special Agent shall deliver the above exhibit (hereinafter the "exhibit") to Mr. Wu. Mr. Wu is ordered to use this exhibit exclusively for the purpose of determining its weight and the identity of the substance, namely whether the exhibit is in fact methamphetamine or other controlled substance. After receiving the exhibit from the FBI Special Agent, Mr. Wu will allow that Special Agent to be present to observe his handling of the exhibit. The Special Agent shall stay close enough to Mr. Wu's handling of the exhibit to ensure the chain of custody and integrity of the exhibit. The Agent shall not be permitted to observe Mr. Wu's work product, instrument readings, or notes.

IT IS FURTHER ORDERED that for purposes of testing the exhibit to determine its identity, Mr. Wu shall take a representative sample of 500 mg or no more than one-half (1/2) of the current reserve weight, if less than 1 gram presently remains as the reserve weight.

IT IS FURTHER ORDERED that, immediately following the weighing and the

1 determination of the identity of the exhibit, Mr. Wu will return the exhibit to the Special Agent
2 and provide that Special Agent with a document signed and dated by Mr. Wu and the Special
3 Agent evidencing the return of the exhibit. The Special Agent shall then return the exhibit to the
4 FBI evidence vault.

5 However, IT IS FURTHER ORDERED that in the event that the weighing and
6 identification of the exhibit cannot be completed on the same day that the FBI delivers the
7 exhibit to Mr. Wu, that the exhibit, including all remaining material of the representative sample,
8 after testing, is to be returned by Alan Wu to the FBI via registered U.S. mail, return receipt
9 requested; or via approved commercial carrier, within five (5) business days after the
10 completion of the analysis.

11 IT IS FURTHER ORDERED that, while the exhibit is in his possession, Mr. Wu shall
12 use the exhibit exclusively for the purpose of determining its weight and its identity and shall
13 safeguard the exhibit, preserving the chain of custody in a manner to protect faithfully the
14 integrity of the exhibit.

15 IT IS FURTHER ORDERED that Mr. Wu shall conduct the reweighing and
16 identification ordered herein, and shall provide the government with a declaration under penalty
17 of perjury, under 28 U.S.C. § 1746, executed either by himself or by the head of the facility
18 where the reweighing and identification of the exhibit occurred, stating that he has complied
19 with this Order.

20 IT IS FURTHER ORDERED that, in accordance with Rule 16(b)(1)(B) of the Federal
21 Rules of Criminal Procedure, the defendant shall provide the government with a copy of the
22 results or report of the physical examinations and scientific tests or experiments which resulted
23 from the analyses conducted under this Order..

24 IT IS SO ORDERED.

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26 DATED: October 28, 2009

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HOWARD R. LLOYD
United States Magistrate Judge